

HOUSE BILL NO. 334

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MUÑOZ, Vazquez, LeDoux

Introduced: 2/22/16

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to visitation and child custody."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 25.20.061 is amended to read:

4 **Sec. 25.20.061. Visitation in proceedings involving domestic violence.** If
5 visitation is awarded to a parent who has **been convicted of** [COMMITTED] a crime
6 involving domestic violence, against the other parent or a child of the two parents,
7 within the five years preceding the award of visitation, the court may set conditions for
8 the visitation, including

9 (1) the transfer of the child for visitation must occur in a protected
10 setting;

11 (2) visitation shall be supervised by another person or agency and
12 under specified conditions as ordered by the court;

13 (3) the perpetrator shall attend and complete, to the satisfaction of the
14 court, a program for the rehabilitation of perpetrators of domestic violence that meets
15 the standards set by the Department of Corrections under AS 44.28.020(b), or other

1 counseling; the perpetrator shall be required to pay the costs of the program or other
2 counseling;

3 (4) the perpetrator shall abstain from possession or consumption of
4 alcohol or controlled substances during the visitation and for 24 hours before
5 visitation;

6 (5) the perpetrator shall pay costs of supervised visitation as set by the
7 court;

8 (6) the prohibition of overnight visitation;

9 (7) the perpetrator shall post a bond to the court for the return and
10 safety of the child; and

11 (8) any other condition necessary for the safety of the child, the other
12 parent, or other household member.

13 * **Sec. 2.** AS 25.20.095(g) is amended to read:

14 (g) In making a determination of the best interests of the child, the court shall
15 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption
16 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
17 section. In addition, there is a rebuttable presumption that a deployed parent's
18 visitation rights may not be delegated to a family member who has **been convicted of**
19 **a crime involving** [A HISTORY OF PERPETRATING] domestic violence against a
20 spouse, a child, or a domestic living partner, or to a family member with an individual
21 in the family member's household who has **been convicted of a crime involving** [A
22 HISTORY OF PERPETRATING] domestic violence against a spouse, a child, or a
23 domestic living partner.

24 * **Sec. 3.** AS 25.20.110(g) is amended to read:

25 (g) In making a determination of the best interests of the child, the court shall
26 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption
27 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
28 section. In addition, there is a rebuttable presumption that a deployed parent's
29 visitation rights may not be delegated to a family member who has **been convicted of**
30 **a crime involving** [A HISTORY OF PERPETRATING] domestic violence against a
31 spouse, a child, or a domestic living partner, or to a family member with an individual

1 in the family member's household who has **been convicted of a crime involving** [A
 2 HISTORY OF PERPETRATING] domestic violence against a spouse, a child, or a
 3 domestic living partner.

4 * **Sec. 4.** AS 25.24.150(c) is amended to read:

5 (c) The court shall determine custody in accordance with the best interests of
 6 the child under AS 25.20.060 - 25.20.130. In determining the best interests of the child
 7 the court shall consider

8 (1) the physical, emotional, mental, religious, and social needs of the
 9 child;

10 (2) the capability and desire of each parent to meet these needs;

11 (3) the child's preference if the child is of sufficient age and capacity to
 12 form a preference;

13 (4) the love and affection existing between the child and each parent;

14 (5) the length of time the child has lived in a stable, satisfactory
 15 environment and the desirability of maintaining continuity;

16 (6) the willingness and ability of each parent to facilitate and
 17 encourage a close and continuing relationship between the other parent and the child,
 18 except that the court may not consider this willingness and ability if one parent **has**
 19 **been convicted of a crime involving sexual assault or** [SHOWS THAT THE
 20 OTHER PARENT HAS SEXUALLY ASSAULTED OR ENGAGED IN] domestic
 21 violence against the **other** parent or a child, and that a continuing relationship with the
 22 [OTHER] parent will endanger the health or safety of either the **other** parent or the
 23 child;

24 (7) any evidence of domestic violence, child abuse, **sexual abuse**, or
 25 child neglect in the proposed custodial household or a history of violence between the
 26 parents;

27 (8) evidence that substance abuse by either parent or other members of
 28 the household directly affects the emotional or physical well-being of the child;

29 (9) other factors that the court considers pertinent.

30 * **Sec. 5.** AS 25.24.150(g) is amended to read:

31 (g) There is a rebuttable presumption that a parent who has **been convicted of**

1 **a crime involving** [A HISTORY OF PERPETRATING] domestic violence against
 2 the other parent, a child, or a domestic living partner may not be awarded sole legal
 3 custody, sole physical custody, joint legal custody, or joint physical custody of a child.

4 * **Sec. 6.** AS 25.24.150(h) is amended to read:

5 (h) [A PARENT HAS A HISTORY OF PERPETRATING DOMESTIC
 6 VIOLENCE UNDER (g) OF THIS SECTION IF THE COURT FINDS THAT,
 7 DURING ONE INCIDENT OF DOMESTIC VIOLENCE, THE PARENT CAUSED
 8 SERIOUS PHYSICAL INJURY OR THE COURT FINDS THAT THE PARENT
 9 HAS ENGAGED IN MORE THAN ONE INCIDENT OF DOMESTIC VIOLENCE.]

10 The presumption **under (g) of this section** may be overcome by a preponderance of
 11 the evidence that the perpetrating parent has successfully completed an intervention
 12 program for batterers, where reasonably available, that the parent does not engage in
 13 substance abuse, and that the best interests of the child require that parent's
 14 participation as a custodial parent because the other parent is absent, suffers from a
 15 diagnosed mental illness that affects parenting abilities, or engages in substance abuse
 16 that affects parenting abilities, or because of other circumstances that affect the best
 17 interests of the child.

18 * **Sec. 7.** AS 25.24.150(i) is amended to read:

19 (i) If the court finds that both parents have **been convicted of a crime**
 20 **involving** [A HISTORY OF PERPETRATING] domestic violence under (g) of this
 21 section, the court shall either

22 (1) award sole legal and physical custody to the parent who is less
 23 likely to continue to perpetrate the violence and require that the custodial parent
 24 complete a treatment program; or

25 (2) if necessary to protect the welfare of the child, award sole legal or
 26 physical custody, or both, to a suitable third person if the person would not allow
 27 access to a violent parent except as ordered by the court.

28 * **Sec. 8.** AS 25.24.150(j) is amended to read:

29 (j) If the court finds that a parent has **been convicted of a crime involving** [A
 30 HISTORY OF PERPETRATING] domestic violence under (g) of this section, the
 31 court shall allow only supervised visitation by that parent with the child, conditioned

1 on that parent's participating in and successfully completing an intervention program
2 for batterers, and a parenting education program, where reasonably available, except
3 that the court may allow unsupervised visitation if it is shown by a preponderance of
4 the evidence that the violent parent has completed a substance abuse treatment
5 program if the court considers it appropriate, is not abusing alcohol or psychoactive
6 drugs, does not pose a danger of mental or physical harm to the child, and
7 unsupervised visitation is in the child's best interests.

8 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **APPLICABILITY.** This Act applies to visitation and custody orders issued on or after
11 the effective date of this Act.